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ABSTRACT

A study determined what constitutes an illegal pre-employment question, reviewed current laws and literature on the subject, and determined the prevalence of illegal questions asked by organizations. Except in the case of specific statutory law, there is no precise way to define what constitutes an illegal question; however, state and federal guidelines as well as established case law provide fairly clear parameters. A survey of the human rights and labor departments of all 50 states, designed to determine which states had enacted stronger legislation than the general framework provided by federal legislation, indicated a range of no laws to very specific laws concerning employment screening. A survey questionnaire, designed to determine the extent to which employers would ask or consider asking illegal questions, was sent to 350 various organizations in Wisconsin and returned by 157 organizations. The sample of organizations was stratified in relation to nine basic industry types and the number of employees. Results indicated that: (1) a large majority of organizations are likely to be asking potentially illegal questions in their pre-employment screening process; (2) the food service/restaurant and wholesale/retail trade industries appear to be the worst potential offenders; and (3) larger organizations are less likely to ask potentially illegal questions than smaller organizations. (Twenty references, four tables of data, and an appendix containing a list of legal and potentially illegal questions are attached.) (RS)

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Defining and Quantifying Potentially Discriminatory Questions in Employment Interviewing

by

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Paper presented at the 1989 Speech Communication Association Convention, Applied Communication Section, San Francisco, CA

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The pre-employment interview remains the primary means by which an organization identifies potential employees and narrows the candidate pool in order to make a hiring decision. Goodale (1982) believes that more organizations are using selection interviews as a way to eliminate the discrimination that results from selection tests. Some organizations might unknowingly believe that selection interviews are not subject to the same standards of discrimination as presented in legislation as other selection devices. However, the 1972 Equal Employment Opportunity Act states that discrimination scrutiny applies to either written or oral means used as a basis for any employment decision. Thus, selection interviews must be shown not to discriminate. Federal, state, and local governments have enacted legislation to prohibit discrimination in the employee selection process. The purpose of this study is threefold: first, to determine what constitutes an illegal pre-employment question; second, to review current laws and literature on the subject; and third, to determine the prevalence of illegal questions asked by organizations.

PARAMETERS OF THE SELECTION INTERVIEW, DISCRIMINATION, AND THE LEGALITY OF PRE-EMPLOYMENT QUESTIONS

The pre-employment or selection interview(s) provides an opportunity for employers to adequately match qualified applicants for available jobs. Skopec (1986) identifies two types of selection interviews. One is the *screening* interview. This is when candidates have their first extended contact with the organization, usually through the personnel department. The second is the *placement* interview. This is when qualified applicants are called back for interviews with those who will be responsible for hiring and/or managing them. While many smaller organizations may not have placement interviews, such interviews are likely to occur in larger organizations.

If the pre-employment interview is regarded as an opportunity to collect and share information, then both the interviewer and the interviewee suffer when the interaction of the interview transgresses into illegal areas of questioning. The interviewer who asks potential litigious questions may put the interviewee in an awkward situation; the interviewee may feel discriminated against or believe that the potential for discrimination exists in this organization. The interviewer who is unaware that he/she is trespassing into illegal areas of questioning may suddenly

find the interviewee uncooperative and conclude that the applicant is not desirable as a potential employee.

This scenario is not far-fetched. "Unsuccessful applicants often maintain they were questioned improperly when alleging they were denied employment for discriminatory reasons." (Voluck, 1987) Sincoff and Goyer (1986) add that, "many professional recruiters...believe that organizations are more susceptible to discrimination charges stemming from the selection process than from any other area of employment practice." (p.71) Consequently, litigation stemming from discriminatory interviewing practices is costly and can provide negative messages for present employees and other future employees as well as the local public. But what exactly constitutes discrimination?

Sincoff and Goyer (1984) identify four areas of discrimination: *disparate treatment, adverse impact, perpetuating past discrimination,* and *lack of reasonable accommodation. Disparate impact* involves treating individuals differently soley based on things like race, sex, national origin, etc. *Adverse impact* is somewhat more subtle than disparate treatment. It occurs when an employer bases hiring on factors that are not job related and those factors produce a statistically different negative effect on certain groups of people. For instance, it would be discriminatory for an employer to require larger physical characteristics than really necessary to perform in a job in order to exclude women from the job. *Perpetuating past discrimination* involves practices that on the surface appear fair, but when cast in the light of past action become discriminatory. For example, a company might conduct interviews only with candidates that have been recommended by current employees. If the company has a history of excluding blacks, then the chances of a white employee recommending a black for the job could be low. The practice would be discriminatory. Finally, *lack of reasonable accommodation* occurs when employers refuse to work out reasonable solutions to problems that pose minor obstacles to employability because of a person's religion, handicap, etc.

Rarely are legal issues a cut and dry matter, however, and the area of legal interviewing practices is no exception. Federal legislation has been enacted to insure that certain classes of people (women, racial and religious minorities, adults over 40, and the handicapped) have equal access to jobs. However, the Equal Employment Opportunity Commission (EEOC)

has no enforcement power to protect against employment screening violations. If a job applicant feels that he/she was asked discriminatory questions in an interview, it is up to that individual to take the organization to court to enforce compliance with the law and to receive compensation for the discriminatory behavior. If an individual takes a case to court two possible legal levels are operative: *case law* and *statutory law*.

If there is no specific state or local statute against asking a specific question, then the individual would have to prove his/her case by demonstrating that the question(s) asked violated federal legislation and the information obtained was used for discriminatory purposes. The case would be won or lost on the basis of prior case history and on the strength of proof that illegal discrimination actually took place. In light of a recent Supreme Court decision, however, it appears that the burden of proof lies more directly on the plaintiff than in the past. The Ward's Cove Packing v. Atonia, No. 87-1387 decision ruled that the plaintiff must prove that they were discriminated against. Prior to the 1989 ruling, the burden of proof fell on the employer to prove that no discrimination took place. It remains to be seen how much influence this one Supreme Court ruling will have.

A case involving statutory law is better defined and probably easier for a plaintiff to win than case law. A number of states and localities have specific statutes which prohibit certain questions from being asked. It is not necessary to prove that such acquired information was used for discriminatory purposes. It is assumed prima facia evidence of discrimination if a proscribed question is asked. For example, the Michigan Department of Civil Rights *Pre-employment Inquiry Guide* specifically states that it is illegal to ask about an applicant's marital status. If it is proven that an organization asked this question, a specified penalty can be enforced.

There are certain exceptions to both federal legislation and to state law. Certain job requirements make legal some otherwise illegal questions when a Bona fide Occupational Qualification (BFOQ) is present. A BFOQ is a special case in which employers can use specialized criteria if they can demonstrate that those criteria are directly relative to the job. "BFOQs are the major exception to regulations designed to promote equal opportunity, but responsibility for establishing a BFOQ rests with the

employer...Courts have set fairly stringent rules for demonstrating claims of occupational necessity." (Skopec, 1986, p.55) For example, while it would normally be discriminatory to hire a person because of his/her physical appearance, discriminating on this variable would be a necessary part of a movie casting director's job. The nature of the acting profession often dictates specific physical characteristics for certain roles.

In summary, except in the case of specific statutory law, there is no precise way to define what constitutes an illegal question. However, state and federal guidelines as well as established case law provide fairly clear parameters. If an interviewer is probing into areas protected by federal or state legislation, (e.g., national origin, marital status, handicaps, age, etc.), the interviewer's organization is risking a discrimination suit. Chambers & Goldstein (1986) indicate that there is a growing amount of litigation concerning questions asked in pre-employment interviews. Stewart and Cash (1988) provide a good summary of rules to determine the legitimacy of interview questions:

> First, federal laws supersede state laws unless the state laws are more restrictive. Second, the EEOC is not concerned with intent, but effect....Fourth, your organization is liable if unlawful information is maintained or used even if you did not ask for it. If an applicant volunteers unlawful information, stop the applicant and explain that your organization does not use such information for hiring purposes.... Sixth, never ask certain questions only of women, minorities, ethnic candidates or older persons. (p. 134)

REVIEW OF RELEVANT LAWS

The major federal laws that apply to pre-employment selection interviews are:

1. 1866, 1870, and 1871 -- *Civil Rights Acts* (prohibit discrimination against minorities).
2. 1964 -- *Civil Rights Act* (prohibits discrimination on the basis of race, color, or national origin, and requires employers to discover discriminatory practices and eliminate them).

3. *Executive Order 11246* in 1965 as amended by *Executive Order 11375* in 1967 (prohibits the discrimination against any minorities for any organization holding government contracts).

4. 1967 -- *Age Discrimination in Employment Act* (prohibits age discrimination against any applicant over the age of 40).

5. 1972 -- *Equal Employment Opportunity Act* (extends the Civil Rights Act of 1964 to public, private, educational institutions, labor organizations, and employment agencies).

6. 1973 -- *Rehabilitation Act* (prohibits discrimination against handicapped persons for federal government contracts who employ more than 50 employees and have contracts in excess of $50,000).

7. 1974 -- *Vietnam Era Veterans Readjustment Act* (encourages employers to hire qualified Vietnam veterans, including those who are disabled).

8. 1987 -- *Immigration Reform and Control Act* (prohibits discrimination on the basis of citizenship).

Unfortunately, as previously mentioned, there is no central clearinghouse of information regarding areas of discriminatory questioning or for filing of discrimination suits. The EEOC issues interpretations of the various laws, but does not have the power to order a company to discontinue a discriminatory practice. A job applicant with a grievance must take an organization to court and win the discrimination case so that a judge can order the company to quit the discriminating practice and/or right the discriminated person(s).

In the process of this research project the national EEOC office, all regional EEOC offices, and the human rights and labor departments from all 50 states were contacted in an effort to determine which states had enacted stronger legislation than the general framework provided by federal legislation. The survey revealed a wide range -- from no laws to very specific laws concerning employment screening. In addition to Michigan mentioned earlier, Hawaii, Maine, Massachusetts, Nevada, Tennessee, West Virginia, and Wisconsin have all enacted stronger legislation making some questions illegal to ask. Other states (Idaho, Missouri, Montana, Oregon, South Dakota, and Washington) have similar legislation and label such

questions inadvisable, unfair, or unlawful for discriminatory use. Still other states (Alaska, Arkansas, Florida, Nebraska, New Mexico, North Dakota, Pennsylvania, Utah, and Wyoming) have enacted state legislation that serves to echo the intent and scope of the federal legislation. Finally, some states (e.g., Louisiana) indicated that they have no EEO legislation. Generally, though, court rulings determine how both federal and state legislation applies to particular cases.

PRE-EMPLOYMENT SCREENING RESEARCH

Once an applicant successfully completes an initial interview in the personnel department, she/he is often invited to be interviewed by the person whom he/she would work with directly. In most cases, these are department heads, section chiefs, or first line supervisors. Even in the most human resource conscious organizations, it is unlikely that all of those who interview potential employees are fully aware of topics that can trespass into areas of potentially illegal questioning. Someone unfamiliar to the interviewing process might assume that the laws have taken care of illegal questioning in pre-employment interviewing. However, a review of the literature indicates contradictory findings.

Several studies of on-campus recruiting interviews report that a minimal amount of illegal interviewing questions are asked. Scott, Pavlock, and Lathan (1985) found that only 22 of 312 college accounting majors reported that they were asked questions they believed to be illegal. However, there was no indication in the study whether or not the students knew what constitutes a legal or illegal question. Jablin and Tengler (1982) arrived at similar findings. Seventy-four college placement directors responded to their survey and indicated that they perceived discrimination to occur in only about five percent of the interviews that occur on their campuses. On the surface these reports are encouraging. However, two things might have had an influence on keeping the number of reported violations so low. Jablin and Tengler found that while over 40 percent of college placement offices provide recruiters with guidelines on legal interviewing practices, the placement directors also reported that 40 percent of the interviewers are probably unaware of when they are asking discriminatory questions. With this much lack of awareness, it seems likely that violations are occurring in more than five percent of the interviews. Also, the report was based on college placement official's opinions. It

likely that they would only be aware of a problem if a student complained. In order for a student to complain he/she would need to know what constitutes an illegal interview question. Siegfried and Wood (1983) found that students are unlikely to know this information.

In a study examining the prevalence of illegal questions on employment applications among Fortune 500 companies, Miller (1980) found a much higher frequency of illegal question items. Half of the companies listed in the Fortune 500 were asked to furnish a copy of their employment application with over 60 percent responding. Miller found that 98.7 percent of the organizations examined included at least one illegal item in their employment application. In a similar study, Sherman (1988) found almost identical results. While we are most interested in the face-to-face interactional setting, this provides an indication of the level of concern or awareness of legal questioning. Additionally, application forms are often used as guidelines for the face-to-face interview.

The issue remains that people -- employers and job applicants -- are affected by the various laws that protect certain areas from questioning in the selection interview. Few would argue the importance of the interview to both the employer and the job applicant. Yet the level of interviewer awareness or concern with legal question areas is not clearly known. Most of the information we have about illegal interviewing practices comes from on-campus interviews, from recall impressions of job candidates, or from college placement administrators whose opinions are formed by the number of students that report that they have felt discriminatory questions were asked. [For review articles of selection interview research, see Arvey & Campion (1982) written from the management/personnel perspective and Jablin & McComb (1984) written from the communication perspective.]

There are a number of potential problems with these approaches. First, the number and types of companies that conduct interviews on college campuses provide a relatively narrow sample of all of the possible hiring organizations. Second, relying on recall may result in misleading conclusions. Interviewees are not likely to know what constitutes an illegal question, and even if they are asked about specific question areas by a researcher, they may not remember any or all illegal items that may have been asked in an interview. Third, the information college placement administrators have about what actually goes on in on-campus interviews is based largely on whether or not a student complains about an interview. It

seems reasonable that many forces work against this happening with much frequency. An interviewee must know what is illegal, then they must feel strongly enough about the situation to report it to the placement administrator.

The aim of this study is to move beyond the recall impressions of job candidates and college placement officers and directly ask hiring agents what questions they ask/might ask in job interviews. Additionally, emphasis has been placed on gathering information from a broader spectrum of potential employers than would be represented by those conducting on-campus interviews.

Method

This study employed the use of a survey questionnaire to determine the extent to which employers would ask or consider asking illegal questions either on an application form or in a pre-employment interview. In an effort to conceal the intent of the study, a cover letter was sent explaining that the study was an attempt to gain current information about what information employers are interested in and likely to ask. The cover letter emphasized that the information gleaned would be used to help improve an interviewing course offered at the University of Wisconsin. A postage-paid return envelope was provided with each questionnaire.

Sample

This study utilized a stratified random sampling approach that included 350 various organizations in Wisconsin. The authors felt that important differences might exist between different industry types and/or different sizes of organizations relative to their tendencies to ask illegal questions. The sample was stratified in relation to nine basic industry types as well as by the number of people employed (see Table 1). Questionnaires were sent to hiring agents (e.g., personnel directors, managers, owners, etc.) in each of the organizations.

Instrument

The questionnaire survey consisted of a total of 41 items that the authors believed were typical interview questions. (see Appendix A) The authors and one other individual familiar with the literature on legal interviewing practices coded the questions that he/she felt were illegal

based upon their interpretation of legislation and their reading of the personnel selection, and interviewing literature. If a question probed into areas protected by federal legislation or by Wisconsin state law (e.g., marital status, race, national origin, sex, etc.), it was considered illegal. In addition, a labor law attorney also coded the questions. There was an overall inter-coder agreement of 97%.

The questions were also coded in relation to illegal classification. (see Voluck, 1987) There was an overall inter-coder agreement of 91%. While a number of illegal items may clearly fall in more than one class, for later reporting purposes each illegal question is represented in only one classification based on what was deemed the primary thrust of the question. Following are the illegal question classifications and the corresponding questionnaire items: *Age* 5, 24, 26; *Arrest and Conviction Record* 15, 40; *Citizenship* or *National Origin* 4, 7, 29; *Handicaps* 12, 31, 37; *Marital* or *Family Status* 8, 10, 14, 19, 21, 23; *Race* or *Color* 36; *Religion* 33, *Sex* 18, 28.

Results

Of the 350 surveys sent out, 157 were returned. As Table I indicates, there was generally a good frequency spread among different industry types, though the returns for the Finance/Insurance/Banking and Educational Services categories were few. This is also true for the stratification relative to industry size, although the number of large companies that responded to the survey was also small.

Of the 157 organizations that responded, 151 (96%) indicated that they would or might consider asking at least one illegal question. A summary of the percentage and rankings of illegal responses based on industry classification and illegal response classification is provided in Table III. Table IV displays the percentage and ranking of illegal responses based on industry size and illegal response classification. Both tables are treating a "yes" or a "maybe" response synonymously as an indication of the knowledge level or concern about what constitutes an illegal interview question.

Table III shows that organizations in each industry type indicated that they would or might consider asking quite a few illegal questions. The Food Services/Restaurant, Other (including Human Services, Construction, and Government), and the Wholesale/Retail industries appear

to be the worst potential offenders. Finance/Banking/Insurance and Educational Services were found to be interested in the fewest number of illegal items, though as mentioned before, the number of returns were relatively few.

Table II shows the percentage of positive responses to each of the illegal items in the the questionnaire. Table III also displays the overall prevalence of questioning relative to illegal classification. The most common responses to the items related to arrest record and conviction (56%), age (47%), and handicaps (42%). Information concerning religion (5%) and race (6%) were shown to be the least chosen.

As Table IV indicates, there is some variability between different sized industry groups and the amount of illegal questions they would consider asking. Organizations employing 6-10 employees showed the largest interest in such information, while organizations employing over 2,500 people showed the least. Once again, however, any conclusions made about large organizations must be made with the low number of responses in mind.

CONCLUSION

The results of this study indicate that a large majority of organizations are likely to be asking potentially illegal questions in their pre-employment screening process. (It should be noted that in none of the returned surveys did the respondents mark on the survey that a question was considered legal because of a BFOQ.) Although this study only sampled organizations in Wisconsin, the results are very similar to the 98.7% rate Miller (1980) found among Fortune 500 companies.

This study also shows that certain industries appear to be worse potential offenders than others. For example, the Food Service/Restaurant and Wholesale/Retail Trade industries were found to have among the highest percentages of illegal responses in the survey. This might stem from the fact that the nature of the work in these industries requires a much less educated work force than do industries like Financial Services. It is important to point out, however, that even highly professional industries like Educational Services and Health Services showed an interest in 20 percent of the illegal responses possible in the survey.

There is also evidence to support the notion that larger organizations are less likely to ask potentially illegal questions than smaller organizations. The ranking shows that the worst potential offenders were

organizations hiring ten employees or less, while the companies least likely to ask potentially illegal questions were those with 500 or more employees. It is reasonable to assume that a larger company would likely devote more resources specifically toward the hiring and staffing function. Individuals in these departments would presumably be more specialized and knowledgeable about relevant hiring laws than individuals in smaller organizations who have to spread their duties beyond those specifically related to personnel matters. However, it is important to keep in mind that the number of surveys returned from the larger organizations was small. Any conclusions about organizational size must be made with this in mind.

A lack of knowledge certainly accounts for part of the reason why so much illegal questioning takes place. This lack of knowledge may be due in part because of a lack of emphasis on the part of schools, trade organizations, relevant professional societies, etc. The authors contacted five professional personnel associations to find out if they provided any literature and/or training on this issue. A spokesperson from the American Society for Personnel Administration indicated that they did publish a list of legal and illegal questions. This person indicated that the list was requested often by association members. The International Personnel Management Association also has relevant literature. However, officials from the College and University Personnel Association, the American Council on Education, and the Employment Management Association indicated that their associations had no information on this topic.

Lack of regard for the law might also be a factor contributing to unlawful pre-employment screening. In a recent Wall Street Journal article, Berkeley (1989) described ways managers he had talked to got around relevant law. Under the promise of anonymity some managers and personnel officers indicated that they would have low level employees ask a job applicant seemingly innocuous questions in order to find out about protected information. For example, one method was to have a clerk ask the applicant about his/her choice of health insurance policies as a way to find out if that person had children or not. Berkeley found that other employers would flat out ask if a person used birth control, had a working spouse, etc.

Regardless of whether employers are aware of the situation or not, the evidence indicates that inappropriate interviewing practices are commonplace. The question becomes what to do about the situation. Certainly

training is in order. Interviewers need to be fully aware of appropriate interview questions so as not to inadvertently ask illegal questions. Employers also need to be trained in how to carefully plan the interview. If a well planned interview schedule is used, an interviewer would be much less likely to stray into inappropriate areas. The evaluation process would be much more consistent across interviews as well.

Beyond knowing what is legal or not legal, employers also need to have the opportunity to look at the underlying assumptions they hold when wanting to ask an illegal question. For example, the employer who asks if a woman has children is probably really asking whether or not that woman will be reliable and on time. Yet, there are a multitude of cases in which women with children are extremely reliable workers, as are there cases of individuals without children who are extremely unreliable. Employers need to learn to focus on their real concerns and then ask non-discriminatory questions specifically to the point. Otherwise, their knowledge will be based on stereotypes. At best they will be working from a faulty decision premise, and at worst, will open up their organization to a lawsuit.

There are a variety of ways in which employers and potential employees could receive assistance in learning about this area. One resource is the college placement office. But work needs to be done here. As the Jablin and Tengler (1982) study pointed out, only 40% of college placement offices surveyed provided support in this area for students and for organizations interviewing on campus. We are aware of other college placement offices that offer little or no such support. One even encourage students to divulge information that would can not legally be considered as a basis for hiring. Clearly, more attention needs to be given to the issue at a number of college and university placement offices. Relevant material should be available and regularly scheduled seminars could be held for the benefit of both students and interviewing organizations.

This is far from a total solution, however. A majority of organizations do not conduct interviews on college campuses. These organizations need other ways to become familiar with acceptable pre-employment practices. Professional associations, as well as local and national trade organizations and chambers of commerce might be avenues of support for these organizations. For example, a local chamber of commerce might be able to stress the importance of appropriate interviewing practices in a newsletter. They might also arrange training workshops for

all member organizations interested in learning about the subject.

Interviewees should also be aware of their rights. As Siegfried and Wood (1983) found, training interviewees about illegal interview questions reduced their willingness to respond to such questions. This brings up an interesting dilemma, however. How should one respond in such a situation? It is likely that a flat refusal to answer an illegal question would likely harm an individual's chances of getting the job for which he/she is interviewing. To simply give away any information asked for could result in not getting hired for inappropriate reasons. Berkeley (1989) found that some applicants simply lie when asked inappropriate questions. Job applicants have little formal guidance on how to behave in such situations.

The authors surveyed a number of interviewing texts and found little information as to how a job applicant should respond if asked an illegal question (e.g., Goodale, 1982; Skopec, 1986; Sincoff & Goyer, 1984; Stewart & Cash, 1989). Some of the books never addressed the subject, others offered only a paragraph or two on potential responses. The Sincoff & Goyer (1984) text lists a set of responses, but provides no guidance as to which strategies are the best. Only a couple of studies have been found that go into any depth in examining how job applicants respond to inappropriate interview questions (Siegfried & Wood, 1983; Springston & Keyton, 1988; Keyton & Springston, 1989). The authors are currently collecting data from personnel managers in an attempt to reveal what response strategies managers prefer.

This knowledge will aid those of us who teach interviewing, organizational communication, and relevant business courses. If we have an obligation to teach our students what can and cannot be asked in an interview, we also have an obligation to teach them the available ways to deal with inappropriate questions when they arise. Only by informing them about the array of possibilities, and providing them with the opportunity to practice these responses will they be adequately prepared for such situations.

Individuals who do not enroll in relevant college courses or those who do not attend college also need to be trained in the necessary knowledge and skills. College placement offices and/or knowledgeable professors could conduct seminars on campus each term. Seminars for the general public could also be conducted periodically. Also, high school seniors could be acquainted with the subject through the school's counseling office, in

workshops, etc.

Finally, more direct research is needed in what actually occurs in pre-employment interviews. It is necessary to identify what variables are involved when illegal questions are asked. For example, are certain questions about family or marital status only asked of women? Also, what happens at different stages of the interviewing process? It is possible that initial screening interviews encounter fewer problems than subsequent placement interviews conducted by managers or supervisors outside of the personnel department. The more we know about the variables surrounding the occurrence of illegal interviewing practices, the more prepared we will be in training interviewers to avoid such practices and interviewees to deal effectively in those situations when they happen.

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TABLE I

Classification by Industry Type and Size

Industry Type	N
Wholesale/Retail Trade	24
Transportation/Communications/ Utilities	20
Business Services	12
Educational Services	9
Health Services	25
Finance/Insurance/Banking	6
Food Services/Restaurants	21
Manufacturing	24
Other (includes Human Services, Construction, Government)	16

Industry Size	N	Industry Size	N
1-5	25	100-499	34
6-10	15	500-999	9
11-19	19	1,000-2,499	3
20-49	23	2,500-9,999	8
50-99	21	10,000-MORE	0

N=157

TABLE II

Percentage of Positive Responses to Illegal Interview Items

Item	Classification	Yes	Maybe	Total
4	Citizenship/National Origin	12%	16%	28%
5	Age	32%	17%	49%
7	Citizenship/National Origin	3%	10%	13%
8	Marital/Family Status	24%	16%	40%
10	Marital/Family Status	1%	5%	6%
12	Handicap	32%	22%	54%
14	Marital/Family Status	17%	17%	34%
15	Arrest Record	30%	27%	57%
18	Sex	8%	6%	15%
19	Marital/Family Status	5%	13%	18%
21	Marital/Family Status	11%	23%	34%
23	Marital/Family Status	14%	24%	38%
24	Age	38%	11%	50%
26	Age	20%	28%	48%
28	Sex/Marital/Family Status	5%	11%	16%
29	Citizenship/National Origin	2%	4%	6%
31	Handicap	23%	29%	52%
33	Religion	3%	2%	5%
34	Religion	16%	27%	43%
36	Race	3%	4%	7%
37	Handicap	6%	22%	28%
40	Arrest Record	41%	22%	63%

Table III

Illegal Responses by Industry Type and Illegal Classification

Industry Classification	Illegal Question Categories								
	Age	Arrest or Conviction Record	Citizenship or National Origin	Handicaps	Marital or Family Status	Race	Religion	Sex	Total Average
Wholesale/ Retail Trade (Rank)	53% (3)	62% (4)	21% (1)	44% (3)	32% (2)	8% (3)	26% (5)	17% (3)	30% (3)
Transportation/ Utilities/ Communication (Rank)	52% (4)	58% (5)	8% (7)	42% (4)	15% (7)	0% (7)	0% (5)	10% (6)	23% (5)
Business Services (Rank)	42% (6)	63% (3)	17% (4)	31% (7)	29% (3)	0% (7)	16% (5)	8% (7)	24% (4)
Educational Services (Rank)	41% (7)	33% (9)	4% (9)	26% (9)	13% (8)	11% (2)	17% (3)	11% (5)	19% (8)
Health Services (Rank)	44% (5)	46% (7)	19% (3)	28% (8)	16% (8)	8% (3)	12% (2)	8% (7)	23% (5)
Finance/ Insurance/ Banking (Rank)	28% (9)	50% (6)	8% (6)	33% (6)	12% (9)	0% (7)	0% (5)	0% (9)	16% (9)
Food Services/ Restaurants (Rank)	73% (1)	78% (1)	21% (1)	65% (1)	20% (5)	5% (5)	14% (1)	36% (1)	39% (1)
Manufacturing (Rank)	35% (8)	43% (8)	14% (8)	42% (4)	21% (4)	4% (8)	0% (5)	13% (4)	21% (7)
Other (Rank)	56% (2)	72% (2)	17% (4)	60% (2)	34% (1)	19% (1)	8% (1)	19% (2)	35% (2)
Total Average	47% (2)	58% (1)	14% (5)	42% (3)	22% (2)	8% (7)	5% (8)	14% (5)	28%

Table IV

Illegal Responses by Organizational Size and Illegal Classification

	Illegal Question Category								
	Age	Arrest or Conviction Record	Citizenship or National Origin	Handicaps	Marital or Family Status	Race	Religion	Sex	Total Average
Organizational Size									
1-5	47%	64%	12%	45%	29%	8%	8%	24%	30%
(Rank)	(6)	(5)	(6)	(3)	(4)	(5)	(3)	(2)	(2)
6-10	69%	77%	24%	62%	46%	13%	7%	80%	45%
(Rank)	(1)	(2)	(1)	(1)	(1)	(2)	(4)	(1)	(1)
11-19	54%	77%	16%	44%	23%	5%	0%	16%	26%
(Rank)	(3)	(2)	(5)	(4)	(6)	(4)	(7)	(3)	(5)
20-49	55%	67%	17%	44%	31%	17%	4%	4%	30%
(Rank)	(2)	(4)	(3)	(4)	(3)	(1)	(6)	(6)	(2)
50-99	46%	59%	17%	43%	20%	5%	23%	5%	25%
(Rank)	(5)	(6)	(3)	(7)	(7)	(4)	(5)	(5)	(6)
100-499	49%	50%	22%	47%	29%	0%	9%	12%	27%
(Rank)	(4)	(6)	(2)	(2)	(4)	(6)	(2)	(4)	(4)
500-999	33%	58%	7%	41%	2%	0%	22%	0%	20%
(Rank)	(7)	(7)	(7)	(8)	(9)	(6)	(1)	(7)	(8)
1,000-2,499	33%	83%	0%	44%	33%	0%	0%	0%	24%
(Rank)	(7)	(1)	(8)	(4)	(2)	(6)	(7)	(7)	(7)
2,500-9,999	25%	38%	0%	17%	5%	0%	0%	0%	11%
(Rank)	(9)	(9)	(8)	(9)	(8)	(6)	(7)	(7)	(9)

Appendix A

Potentially Illegal Questions

Citizenship/National Origin

4. What is the name of the place in which you were born?

The only concern regarding an interviewee's citizenship or national origin is that he/she have proof of right-to-work.

7. Where and how did you learn to speak this language?

More appropriate to ask the interviewee about his/her proficiency.

29. Where were your parents born?

More appropriate to ask if the interviewee can provided the employer with proof of right-to-work.

Age

5. Can you provide me with proof of your age, such as a birth certificate, baptismal record, etc.?

Can discriminate on the basis of age if the interviewer is trying to identify those over 40. Can also discriminate on the basis of citizenship, national origin, and religious preference.

24. What is your date of birth?

Discriminatory if trying to identify those workers over 40. Of younger workers, more appropriate to ask if the interviewee can, after employment, submit a work permit if under 18.

26. How would you feel working for a person younger than you?

Illegal if trying to identify those workers over the age of 40. More appropriate to ask the interviewee if he/she foresees any problem in working with people age 18-25 (or other age group).

Marital/Family Status

8. Are you working just to earn extra income?

More appropriate to ask if the interviewee is looking for full-time or part-time work.

10. How much money does your husband/wife make?

It is not appropriate to ask questions regarding the interviewee's marital status or how much a spouse makes.

14. What does your husband/wife do for a living?

It is not appropriate to ask questions to ascertain an interviewee's marital status or what the spouse does for a living.

19. Do you have plans to get married?

It is not appropriate to ask questions regarding an interviewee's past, present, or future relationship plans.

21. What happens if your husband/wife gets transferred or needs to relocate?

More appropriate to ask if the interviewee foresees any trouble in remaining the area.

23. Who will take care of your children while you are at work?

More appropriate to ask the interviewee if he/she foresees any problem in meeting this work schedule.

28. Do you have plans for having children?

Discriminatory on the basis of sex if asked only of women. Can also discriminate on the basis of marital and family status if asked of men. It is not appropriate to ask an interviewee if he/she has plans for having children. It is only appropriate to ask the interviewee if he/she foresees any problem in meeting their work schedule.

Handicap

12. Do you have any handicaps?

More appropriate to ask if there is any physical or mental limitation that would keep the interviewee from performing a specific job.

31. How severe is your handicap?

The employer's only concern is to identify the help/aid a handicapped person may need to perform the job or if a specific handicap may keep the interviewee from performing a specific job.

37. Have you ever been diagnosed as carrying the AIDS virus?

Discriminates on the basis of handicaps which includes health history. The only consideration is whether or not the interviewee can perform the necessary work. The appropriate question is: "Do you have any physical condition which may limit your ability to perform this job?".

Arrest

19. Have you ever been dismissed from a job due to dishonesty?

More appropriate to ask if the interviewee has been convicted of a felony as an adult.

40. Have you ever been arrested of a crime?

The more appropriate question is "Have you every been convicted of a felony as an adult?".

Sex

18. What was your maiden name?

This question would only be asked of females; any such question is discriminatory.

Religion

33. What is your religion?

If the interviewer is concerned about religious preference interfering with work schedules, the appropriate question is "Will you have any trouble meeting this work schedule?".

34. Do you hold any religious beliefs that would prevent from working certain days of the week?

See question 33.

Race

16. Do you feel that your race will be a problem in your performing the job?

There is no appropriate substitute for this question.

note: some of the above questions coded illegal may be appropriate and necessary questions if a specific job carries a BFOQ. In that case, each person interviewing for the job must be made aware of the BFOQ before interviewing and the same question must be asked of all interviewing/applying for the job.

Legal Questions

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1. What previous work experience have you had?

2. Would you be willing to relocate at a later time?

3. Are you a citizen of the United States?

6. What foreign languages can you speak or write?

9. How did you hear about this position?

11. What types of work are you most interested in?

13. What percent of the time are you willing to travel?

16. What type of salary would you need to join us?

17. How would you assess your ability to get along with others?

20. What do you consider to be the most important trends in current events that might have an effect on this company?

22. What is the single most important thing you learned in school that you could apply to this job?

25. What do you know about our organization?

27. Would you describe what you consider to be an ideal manager?

30. As a handicapped person, what help are you going to need in order to do your work?

32. Where do you see yourself in ten years?

35. Would you describe your greatest strengths and weaknesses?

38. What are the traits you least like to see in a supervisor?

39. Would you be willing to work overtime hours if periodically necessary?

41. Have you ever had a problem coping with job stress?